

BIZZELL ET AL. vs. STONE & McDONALD.

Error to a judgment by default—assigned for error that there was no valid service of the writ. Pending the writ of error, the court below permitted the sheriff to amend his return so as to show a legal service. The defendants in error brought up the amended return by certiorari, joined in error, and the judgment was affirmed. See *Brown's ad'rs v. Hill & Co.*, 5 Ark. R. 78; and *Lungren v. Harris*, 1 Eng. R. 474.

Writ of Error to Sevier Circuit Court.

Stone & McDonald brought an action of debt against Bizzell,

Hawkins and Hemphill, in the Sevier Circuit Court, and took judgment by default at the July term, 1847.

The defendants brought error, and assigned for error that the return of the sheriff upon the summons showed no legal service upon two of the defendants.

The defendants in error suggested a diminution of the record, and made affidavit that since the writ of error was sued out, by permission of the court below, the sheriff had so amended his return as to show a valid service upon all of the defendants below; and prayed a certiorari to bring up a perfect transcript. The court awarded a certiorari, the transcript was returned, and then a joinder in error was filed.

RINGO & TRAPNALL, for plaintiffs.

WATKINS & CURRAN, contra.

OLDHAM, J. The error assigned in this case is, that there was no sufficient service of the summons on Bizzell and Hemphill, to authorize a judgment by default to be rendered against them. The transcript of the record returned with the writ of certiorari, shows service in strict compliance with the statute. The record in other respects is regular.

Judgment affirmed.

